

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

January 21, 1969

DEPARTMENT OF LAW OPINION NO. 69-5 (R-33)

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

REQUESTED BY: FRANKLIN J. STOWELL, Superintendent
State Banking Department

QUESTION: Is a sales finance company located outside of the State of Arizona required to be licensed under the provisions of A.R.S. § 44-282 in order to purchase motor vehicle conditional sales contracts from a motor vehicle dealer licensed under the Motor Vehicle Time Sales Disclosure Act?

ANSWER: No. Qualified.

A.R.S. § 44-282.A. relating to the licensing of a sales finance company reads as follows:

"No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this article. No dealer shall engage in business in this state without a license issued by the administrator. No dealer shall sell or transfer any contract to a person in Arizona not licensed under the terms of this chapter."

The Motor Vehicle Time Sales Disclosure Act thus prohibits a sales finance company, as defined in the Act, from engaging in that business in this state without a license and prohibits a dealer, as defined in the Act, from selling or transferring any contract to an unlicensed sales finance company in Arizona.

As a general rule of law, the business of a foreign sales finance company would be subject to state regulation only if it

is transacting business in the state seeking to regulate its business. If, however, the business transacted in the foreign state is in interstate commerce and, therefore, subject to federal regulation under the Commerce Clause of the United States Constitution, a state may regulate that business only if such regulation does not interfere with federal regulation or does not unreasonably interfere with interstate commerce. Union Interchange, Inc. v. Mortensen, 90 Ariz. 112, 366 P.2d 333 (1961); United States v. South-Eastern Underwriters Association, 322 U.S. 533, 64 S.Ct. 1162, 88 L.Ed. 1440 (1944).

It is clear in A.R.S. § 44-282.A. that the Arizona legislature intended no direct regulation by licensing of a sales finance company located outside of the State of Arizona unless the sales finance company were engaged in the business of a sales finance company in Arizona. The Arizona legislature might have attempted indirectly to preclude an unlicensed sales finance company located outside of this state from purchasing any contract from a licensed dealer by prohibiting a licensed dealer from selling or transferring a contract to any unlicensed sales finance company. However, A.R.S. § 44-282.A. prohibits a licensed dealer from selling or transferring contracts only to an unlicensed sales finance company in Arizona. Therefore, it appears that the Arizona legislature intended that a licensed dealer may sell or transfer contracts to an unlicensed sales finance company outside of Arizona.

Whether a sales finance company located outside of this state is engaged in the business of a sales finance company in this state within the meaning of A.R.S. § 44-282.A. would be a question of fact to be determined along the following guide lines: (1) Did it purchase motor vehicle conditional sales contracts from a licensed dealer; (2) if so, are the activities of the sales finance company in making such purchases in interstate commerce; (3) would state regulation unreasonably interfere with interstate commerce.

Even assuming that the purchase of contracts from licensed dealers by a sales finance company located outside of this state

were in interstate commerce, the lack of federal regulation of sales finance companies and the decision of the Arizona legislature, manifested by the Motor Vehicle Time Sales Disclosure Act, that regulation of the business of sales finance companies is intimately related to local welfare, lead us to conclude that regulation of a sales finance company located outside of this state engaged in the business of a sales finance company in this state would be valid under the principles announced in U.S. v. South-Eastern Underwriters Association at 322 U.S. 548-549, 88 L.Ed 1454-1455:

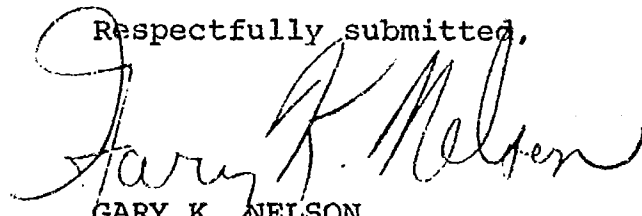
"It is settled that, for Constitutional purposes, certain activities of a business may be intrastate and therefore subject to state control while other activities of the same business may be interstate and therefore subject of Federal regulation. And there is a wide range of business and other activities, which, though subject to Federal regulation, are so intimately related to local welfare that, in the absence of Congressional action, they may be regulated or taxed by the state. In marking out these activities the primary test applied by the Court is not the mechanical one of whether the particular activity affected by the state regulation is part of the interstate commerce, but rather whether, in each case, the competing demands of the state and national interests involved can be accommodated. And the fact that particular phases of an interstate business or activity have long been regulated or taxed by states has been recognized as a strong reason why, in the continued absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid."

Based upon the foregoing, it is our opinion that a sales finance company located outside of the State of Arizona is not required to be licensed under the provision of A.R.S. § 44-282 in order to purchase motor vehicle conditional sales contracts

Opinion No. 69-5
January 21, 1969
Page Four

from a licensed motor vehicle dealer, licensed under the Motor Vehicle Time Sales Disclosure Act, unless the sales finance company is engaged in the business of a sales finance company in this state. If the sales finance company is engaged in that business in this state, it may be required to secure a license.

Respectfully submitted,



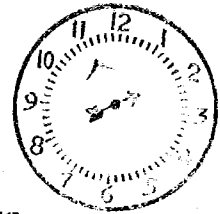
GARY K. NELSON
The Attorney General

GKN:mp

*Bulletin
Board
? Anybody
recognize
Frank*

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

DEC - 6 '71 AM



123 Avon Street
New Haven, Connecticut
November 26, 1971
ATTORNEY GENERAL
STATE OF ARIZONA

The Attorney General
State Capital
Phoenix, Arizona

Re: Op. No. 69-5 (R-33)
January 21, 1969

Dear Sir:

In connection with the above opinion, I respectfully call your attention to the following, based upon which you might now reach a different conclusion.

People v. Fairfax Family Fund, Inc., 235 Cal.
App. 2d 881, 382 U.S.1

Oxford Consumer Discount v. Stefanelli, 102 N.J.
Super. 549, 246 A. 2d 460, 27 L.Ed. 38

Op. New Mexico Attorney General. No.71-65,
May 5, 1971

Sincerely,

(Mrs.) Joanne S. Faulkner